

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1119 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SAKARABHAI JERAMBHAI

Versus

STATE OF GUJARAT

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Appearance:

MR YU MALIK for Appellants

Mr.K.P. Raval, A.P.P. for Respondent No. 1

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CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 03/10/97

ORAL JUDGEMENT

So far as accused/appellant No.1 is concerned, he was not released on bail and, therefore, the order of conviction under Section 304 Part II of IPC which resulted into the sentence of 5 years' RI and fine of Rs.5,000/- he has already undergone and fulfilled. I have used the word 'fulfilled' as he has paid the fine also. The appeal, therefore, is not pressed for on his behalf.

As regards remaining accused/appellants, the conviction is under Section 324 IPC and 325 IPC respectively. The learned trial Judge, therefore, had imposed two years' RI and fine of Rs.2000/- and in default, 1 year's RI in respect of each of the accused/appellant.

Originally the case was one of murder and attempt to commit murder by members of unlawful assembly and other related offences and, therefore, charge under Section 302, 307, 147, 148, 149, 337, 504 all of IPC and Section 135 of Bombay Police Act was framed. In view of conviction under Section 304 Part II, obviously charge under Section 302 of IPC did not survive. However, the conviction has been done in respect of each individual accused for the respective part played by him in the incident. Only three accused having been convicted, the charge of unlawful assembly and resultant effect under Section 149 of IPC did not survive.

In this background, a request is made by the learned advocate Shri Malik appearing for the remaining two accused/appellants that after lapse of almost seven years instead of sending them to jail the amount of fine may be suitably increased. On verifying the record it was found that in the course of trial they did remain in jail for a period of less than one month as under trial prisoner.

Even so far as the parties are concerned they have long forgotten the case. Only the pendency of the appeal for such a long time has resulted into continuation of the matter in the memory of the people and more so that of the accused/appellants. The dispute related to cutting of a babul tree on the boundary of agricultural field of the accused and the victims. At the time of the incident on 9.7.1990 at about 7 A.M. the accused side, according to the prosecution case, has gone to the house of the complainant seeking explanation about cutting of a babul tree. The verbal exchange led to physical blows in which one person lost life.

The crime was not a premeditated one. The verbal exchange escalated into a free-fight in which the complainant side received injuries as stated above. This has prompted the learned trial Judge to hold accused/appellant No.1 guilty of offence under Section 304 Part II of IPC. Naturally, therefore, the role that has been ascribed to the remaining accused/appellants is rightly speaking minor one and viewed after this lapse of time the part played by them would lose much of its intensity.

No doubt, the appellants are not pressing the appeal on merits and are simply requesting that the order of sentence may be altered from imprisonment to that of fine only. To this, the State has neither consented nor objected and has left the matter to the Court.

Looking to the aforesaid background and the fact that the pendency of the appeal has been hanging and the appellants who fully knew that on dismissal thereof they have to undergo two years' RI as fine is already paid by them, Mr. Malik, learned advocate for the accused/appellants submitted that this should be treated as sufficient punishment to them because all the while mentally they were under strain. I agree with Shri Malik. The sword of pending appeal has been hanging since 19.10.1993. The case itself has been going on against them since the year 1990. The judgment came to be delivered on 10.9.1993 by the trial court.

In this background, instead of imprisonment of 2 years' RI in respect of each of the accused/appellants, additional fine in addition to what they have already paid is being imposed. The additional fine so imposed shall be Rs.4,000/- (Rupees four thousand only) in respect of each of the accused which they shall pay within a period of one month from today failing which they shall undergo RI for two years each. Bail be continued till then. Appeal is disposed of accordingly.

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